



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 97-68
February 20, 2002

LIMITATION ON INCREMENTAL FUNDING AND DEOBLIGATIONS

BACKGROUND: This PN implements changes to the criteria for incrementally funding contracts and issuing incremental funding modifications and modifications that deobligate funds. These changes have been initiated to reduce both the number of contracts eligible to be incrementally funded and the number of incremental funding and deobligation modifications.

NASA FAR Supplement 1832.702-70 limited incremental funding of cost-reimbursement and fixed-price R&D contracts to those with a total value greater than \$1M, periods of performance that overlap the succeeding fiscal year, and funds are not available to fund the total contract value. R&D cost reimbursement contracts only needed to demonstrate that funds were not available to fund the total contract value. Fixed price R&D requirements had the additional requirement of providing at least 50 percent of the total price as the initial funding. In spite of these restrictions, numerous incremental funding modifications are being issued against each of the above contracts. The high number of modifications creates a workload burden for budget and procurement personnel in the Agency. Accordingly, 1832.702-70 is revised to include additional restrictions on issuing incremental funding modifications and modifications that deobligate funds. Section 1832.702-70(a)(1) is revised to specify a threshold of \$500,000 or more for R&D contracts under which no supplies are deliverable and 1832.702-70(a)(2) is revised to require that the contract period of performance exceed one year. Section 1832.702-70(a)(4) is added to require that initial contract funding be \$100,000 or more. A new paragraph 1832.702-70(d) is added requiring incremental funding modifications to total at least \$25,000 unless the modification is being issued to fully fund a contract. Finally, a new paragraph 1832.702-70(e) is added requiring modifications deobligating funds to total at least \$25,000, except for modifications that close out contracts.

An editorial change is made throughout Part 1832 to revise the title of the head of Code H to read Assistant Administrator for Procurement.

ACQUISITIONS AFFECTED BY CHANGE: This PN applies to cost-reimbursement and fixed-price R&D contracts that may be incrementally funded, and to incremental funding modifications and modifications that deobligate funds.

ACTION REQUIRED BY CONTRACTING OFFICER:

- (a) Ensure that cost-reimbursement contracts meet the criteria at 1832.702-70(a)(1)-(4) before being incrementally funded.
- (b) Ensure that fixed-price R&D contracts meet the criteria at 1832.702-70(c)(1) before being incrementally funded.
- (c) Ensure that all incremental funding modifications (except those that fully fund a contract) total at least \$25,000.
- (d) Ensure that all modifications deobligating funds (except those that close out a contract) total at least \$25,000.

CLAUSE CHANGES: There are no clause changes as a result of this PN.

PARTS AFFECTED: Changes are made in Part 1832.

REPLACEMENT PAGES: You may use the enclosed pages to replace Part 1832.

TYPE OF RULE AND PUBLICATION DATE: This PN was published as a final rule in the Federal Register (67 FR 7618-7619) on February 20, 2002.

HEADQUARTERS CONTACT: Lou Becker, Code HK, (202) 358-4593, e-mail: lbecker@hq.nasa.gov.

R. Scott Thompson
Director, Contract Management Division

Enclosures

PART 1832
CONTRACT FINANCING

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PART 1832 CONTRACT FINANCING

1832.006-2 Definition.

The Assistant Administrator for Procurement is the Agency remedy coordination official.

Subpart 1832.1--Non-Commercial Item Purchase Financing

1832.111 Contract clauses for non-commercial purchases.

1832.111-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.232-79, Payment for On-Site Preparatory Costs, in solicitations and contracts for construction on a fixed-price basis when progress payments are contemplated and pro rata payment of on-site preparatory costs to the contractor is appropriate.

Subpart 1832.2--Commercial Item Purchase Financing

1832.202-1 Policy.

(b)(6) Advance payment limitations do not apply to expendable launch vehicle (ELV) service contracts (see 1832.402).

1832.206 Solicitation provisions and contract clauses.

(g)(2) The installment payment rate shall be that which is common in the commercial marketplace for the purchased item. If there is no commonly used rate, the contracting officer shall determine the appropriate rate. In no case shall the rate exceed that established in the clause at FAR 52.232-30.

Subpart 1832.4--Advance Payments for Non-Commercial Items

1832.402 General.

(e)(1) The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for all advance payments except the following:

(A) The procurement officer is the approval authority for non-fee bearing contracts with domestic entities when the cumulative contract value is \$25,000,000 or less, and for all increases to such contracts over \$25,000,000 previously approved by the Headquarters Office of Procurement as long as the advance payment amount outstanding at any time is not increased.

(B) The contracting officer is the approval authority for the following actions. In these cases, a findings and determination (see FAR 32.410) is not required.

(a) Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Phase I contracts. A class deviation has been signed authorizing use of advance payments on these contracts. The contracting officer shall annotate the contract file that the deviation is on file at the NASA Headquarters Office of Procurement (Code HK).

(b) Expendable launch vehicle (ELV) service contracts. 42 U.S.C. 2459c authorizes advance payments for these contracts. The contracting officer shall document the contract file with the rationale for approving the use of advance payments.

(e)(2) All advance payment authorization requests, except those authorized by 1832.402(e)(1)(B), shall be coordinated with the installation Deputy Chief Financial Officer.

1832.406 Letters of credit.

(b)(1) Each installation is considered a contracting agency for the purposes of this requirement.

1832.407 Interest.

(d)(1) Advance payments without interest are authorized.

1832.409 Contracting officer action.

1832.409-1 Recommendation for approval.

1832.409-170 NASA procedure for approval.

In addition to the items listed in FAR 32.409-1, requests for Headquarters approval of advance payments (see 1832.402(e)(1)) shall include the following information:

- (a) Name of the cognizant NASA Headquarters program or staff office;
- (b) Name and phone number of the contracting officer or negotiator;
- (c) A copy of the proposed advance payments clause;
- (d) If a profit/fee is contemplated, the factors considered in determining the profit/fee (see 1815.404-470);
- (e) Information justifying the adequacy of security to cover the maximum advance payment amount at any time outstanding.

1832.410 Findings, determination, and authorization.

(b) Generally, the format in FAR 32.410 should be used, tailored as follows:

(i) In format subparagraph (a)(2), use the phrase "Advance payments (in an amount not to exceed \$..... at any time outstanding)" in all determinations and findings. The phrase means the maximum unliquidated dollar amount a contractor would need in advance payments at any point in time for the particular contract. The amount would not usually be the full contract value. The amount inserted should be based on an analysis of the contractor's financing needs (monthly or other appropriate period) for the specific contract involved.

(ii) In the second sentence of format subparagraph (a)(4), delete the reference to a special financial institution account if no special financial institution account is required.

(iii) Use format subparagraph (a)(6), not (a)(7) or (a)(8).

(iv) At the end of format paragraph (b), use "is in the public interest."

(v) In format paragraph (c), use the phrase "(the amount at any time outstanding)" in all determinations and findings.

1832.412 Contract clause.

(e) The contracting officer shall use Alternates IV and V when advance payments are provided on Phase I contracts of the Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) programs.

(f) See 1832.412(e).

1832.412-70 NASA contract clauses.

When the clause at FAR 52.232-12 or its Alternates II or V are used, insert the clause at 1852.232-70, NASA Modification of FAR 52.232-12.

Subpart 1832.5--Progress Payments Based on Costs

1832.501 General.

1832.501-1 Customary progress payment rates.

(a) The customary progress payment rate for all NASA contracts is 85 percent for large business, 90 percent for small business, 95 percent for small disadvantaged business, and 100 percent for Phase II contracts in the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. The contracting officer shall insert the applicable percentage in paragraphs (a) and (b) of the clause at FAR 52.232-16.

1832.501-2 Unusual progress payments.

The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for the use of unusual progress payments.

1832.502 Preaward matters.

1832.502-2 Contract finance office clearance.

The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for the actions at FAR 32.502-2, except the Assistant Administrator for Procurement (Code HK) is the approval authority for any deviations addressed in FAR 32.502-2(b).

1832.502-4 Contract clauses.

1832.502-470 NASA contract clause.

The contracting officer may insert a clause substantially as stated at 1852.232-82, Submission of Requests for Progress Payments, in fixed-price solicitations and contracts that provide for progress payments. The recipient of the requests and number of copies may be changed as required.

1832.503 Postaward matters.

1832.503-5 Administration of progress payments.

(c)(i) If the contractor requests it and the contracting officer approving individual progress payments agrees, the administration of progress payments may be based on the overall contract agreement. Under this method, the contractor must include a supporting schedule with each request for a progress payment. The schedule should identify the costs applicable to each order.

(ii) The contracting officer may treat a group of orders as a single unit for administration of progress payments if each order in the group is subject to a uniform liquidation rate and under the jurisdiction of the same payment office.

1832.504 Subcontracts.

(c) Unusual progress payments to subcontractors shall be approved in accordance with 1832.501-2.

Subpart 1832.7--Contract Funding

1832.702 Policy.

1832.702-70 NASA policy.

(a) Cost-reimbursement contracts may be incrementally funded only if all the following conditions are met:

- (1) The total value of the contract (including options as defined in FAR Subpart 17.2) is--
 - (i) \$500,000 or more for R&D contracts under which no supplies are deliverable; or
 - (ii) \$1,000,000 or more for all other contracts.
- (2) The period of performance exceeds one year.
- (3) The funds are not available to fund the total contract value fully at award.
- (4) Initial funding of the contract is \$100,000 or more.

(b) Fixed-price contracts, other than those for research and development, shall not be incrementally funded.

(c)(1) Fixed-price contracts for research and development may be incrementally funded if the conditions of 1832.702-70(a)(1) through (4) are met and the initial funding of the contract is at least 50 percent of the total fixed price.

(2) Incrementally funded fixed-price contracts shall be fully funded as soon as adequate funding becomes available.

(d) Except for a modification issued to fully fund a contract, incremental funding modifications shall not be issued for amounts totaling less than \$25,000.

(e) Except for a modification issued to close out a contract, modifications deobligating funds shall not be issued for amounts totaling less than \$25,000.

(f) The procurement officer, with the concurrence of the installation Comptroller, may waive any of the conditions set forth in paragraphs 1832.702-70(a) through (e). The procurement officer shall maintain a record of all such approvals during the fiscal year.

(g) A class deviation from the conditions set forth in paragraphs 1832.702-70(a) through (e) exists to permit incremental funding of contracts under Phase II of the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. This deviation exists with the understanding that the contracts will be fully funded when funds become available.

1832.704 Limitation of cost or funds.

1832.704-70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor's notice under paragraph (c)(1) of the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), the contracting officer shall promptly provide written notice to the contractor that the Government is --

- (1) Allotting additional funds in a specified amount for continued performance;
- (2) Terminating the contract; or
- (3) Considering whether to allot additional funds; and

(i) The contractor is entitled to stop work in accordance with paragraph (b) of the clause at 1852.232-77, Limitation of Funds; and

(ii) Any costs expended beyond the amount specified in paragraph (a) of the clause at 1852.232-77, Limitation of Funds, are incurred at the contractor's risk.

(b) Upon determining that the contract will receive no further funds, the contracting officer shall promptly give notice of the Government's decision and terminate for the convenience of the Government.

1832.705 Contract clauses.

1832.705-2 Clauses for limitation of cost or funds.

1832.705-270 NASA clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), in solicitations and contracts for fixed-price incrementally funded research and development.

(b) The contracting officer shall insert a clause substantially as stated at 1852.232-81, Contract Funding, in Section B of solicitations and contracts containing the clause at FAR 52.232-22, Limitation of Funds. Insert the amounts of funds available for payment, the items covered, and the applicable period of performance. The amount obligated for fee in paragraph (b) of the clause should always be sufficient to pay fee anticipated to be earned for the work funded by the amount in paragraph (a) of the clause.

Subpart 1832.9--Prompt Payment

1832.906 Contract financing payments.

(a) Except as authorized in 1832.908, it is NASA's policy to make contract financing payments on the 30th day after the designated billing office has received a proper request. However, the due date for making contract financing payments for a specific contract may be earlier than the 30th day, but not earlier than 7 days, after the designated billing office has received a proper request, provided that:

(i) The contractor provides consideration whose value is determined to be greater than the cost to the United States Treasury of interest on funds paid prior to the 30th day, calculated using the Current Value of Funds Rate published annually in the Federal Register (subject to quarterly revision);

(ii) The contracting officer approves the payment date change, with the concurrence of the installation Financial Management Officer; and

(iii) The contract file includes documentation regarding the value of the consideration and the analysis determining that value.

1832.908 Contract clauses.

(c)(3) When the clause at FAR 52.232-25, Prompt Payment, is used in such contracts with the Canadian Commercial Corporation (CCC), insert "17th" in lieu of "30th" in paragraphs (a)(1)(i)(A), (a)(1)(i)(B), and (a)(1)(ii).

Subpart 1832.10--Performance-Based Payments

1832.1001 Policy.

(a)(i) In determining whether performance-based payments are practical in competitive negotiated acquisitions, the contracting officer should consider the procedural impacts (e.g., proposal evaluation complications, longer evaluations, elimination of the potential for award without discussions, increased proposal information requirements) and the impact on small business competitiveness.

(ii) The contracting officer must obtain approval from the Director of the Headquarters Office of Procurement Contract Management Division (Code HK) to use performance-based payments in competitive negotiated solicitations under \$50M. The request for approval must include an

assessment of the practicality of using performance-based payments, as well as the proposed performance-based payments evaluation approach (see 1832.1004(e)(1)(ii)).

1832.1004 Procedures.

(a) See 1815.201(c)(6)(E) for establishing performance bases and payment terms in competitive negotiated acquisitions.

(e)(1)(ii) Use of the price adjustment evaluation technique may require obtaining and analyzing proposal information that is normally not required in NASA firm-fixed-price competitions (see 1815.403-3). When using performance-based payments in competitive negotiated acquisitions under \$50 million, contracting officers should consider the use of alternative evaluation methods, e.g., qualitative evaluation under Mission Suitability or another appropriate factor.

1832.1005 Contract clauses.

(a) If the contract is for launch services, the contracting officer shall delete paragraph (f) of the clause at FAR 52.232-32 in accordance with 1832.1009.

(b)(2) Contracting officers shall not use Alternate I in competitive negotiated acquisitions under \$50 million, unless approval has been obtained to use performance-based payments (see 1832.1001(a)(ii)).

1832.1009 Title.

In accordance with 42 U.S.C. 2465d, NASA shall not take title to launch vehicles under contracts for launch services unless one of the exceptions in the law applies. However, the law does not eliminate NASA's right to take title to other property acquired or produced by the contractor under a contract containing a title provision.

Subpart 1832.11--Electronic Funds Transfer

1832.1110 Solicitation provision and contract clauses.

(a)(1) NASA does not use the Central Contractor Registration. Use the clause at FAR 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration.

(b) In accordance with FAR 32.1106(b), the use of a nondomestic EFT mechanism is authorized. When a nondomestic EFT mechanism is used, the contracting officer shall replace the paragraph at FAR 52.232-34(c) with a description of the EFT mechanism that will be used for the contract.

(c) The payment office shall be the designated office for receipt of contractor EFT information for all NASA contracts.